IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 511 of 1983

with

CIVIL APPLICATION No 1179 of 1983

in

SPECIAL CIVIL APPLICATION No 511 of 1983

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE BRANCH OF INDIANMEDICAL ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

(MR GN DESAI) for Petitioner
MRS.MANISHA LAVKUMAR for Respondent No. 1
MR HAROOBHAI MEHTA for Respondent No. 3
MR MD PANDYA for Respondent No. 4

SERVED BY RPAD - (N) for Respondent No. 5
MR RN SHAH for Respondent No. 6 & 7
MR BR SHAH for Respondent No. 8

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE K.R.VYAS

Date of decision: 12/06/2001

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. This is a petition by Gujarat State Branch of Indian Medical Association whereby Notification dated 25th April, 1979 issued by Health and Family Welfare Department, Government of Gujarat, has been challenged. Prayer is made for its quashing.

#. By the impugned Notification dated 25.4.1979, the State of Gujarat, in exercise of powers conferred by sub-section (1) of Section 28 of the Gujarat Medical Council Act, 1967, amended the schedule appended to the said Act to add medical course prescribed as "Diploma in Nature Cure and Hygiene conferred by Faculty of Nature Cure and Hygiene, Gujarat State" for the purpose of registering students of D.N.C.H. (Diploma in Nature Cure and Hygiene) course to enable them to practise medicine in Nature Cure as also in Allopathy.

#. By this petition, contention advanced is that the impugned amendment, by the Notification, to the said provisions of the schedule is contrary to the Medical Council of India Act and would be detrimental to health and medical treatment of the public at large. It has been submitted in the petition that the holders of Diploma in Nature Cure and Hygiene, in the absence of training and recognized medical qualifications in Allopathic science, cannot be registered as Medical Practitioners to be allowed to practise in Nature Cure and Hygiene along with Allopathic medical science.

#. By amendment to the petition, vires of the provisions of Section 28 of the Gujarat Medical Council Act, 1967, have also been challenged but we do not consider it necessary to go into the question of vires because even on the plain reading of the provisions of two enactments, i.e. the Central Act and the State Act on the subject, we are of the opinion that the Notification issued by the State of Gujarat to enable the Diploma holders in Nature

Cure and Hygiene to practice Allopathy is in direct conflict with the provisions contained in the Indian Medical Council Act.

#. The learned counsel appearing for the State brought to our notice the stand taken by State in its reply-affidavit. Our attention has been invited to Section 2(d) of the Gujarat Medical Council Act, 1967, which reads as under:

> "2(d) `medical practitioner' of `practitoner' means a person who is engaged in the practice of modern scientific medicine in any of its branches including surgery and obstetrics, but not including veterinary medicine or surgery or the Ayurvedic, Unani or Homeopathic system of medicine."

In the reply-affidavit filed by the State, it is further stated that in the definition of `medical practitioner' (as quoted above), there is exclusion of "veterinary medicine or surgery or Ayurvedic or Unani or Homeopathic system of medicine" but there is no exclusion of the medical system of Nature Cure and Hygiene. The amendment made to the Gujarat Medical Council Act, 1967, by the impugned Notification dated 25.4.1979 has thus been supported on the above ground.

#. We have also heard the learned counsel appearing for respondents No.6 and 7 who are the representatives of Diploma holders in Nature Cure and Hygiene and who were likely to be affected by the outcome of this petition. On behalf of these respondents, the learned counsel states that very small number of Diploma holders are now in practice and the last batch of Diploma in Nature Cure and Hygiene passed out in the year 1983 and that course has been closed since then.

#. Having heard the learned counsel appearing for the parties, in our considered opinion, the petition must succeed. The stand taken on behalf of the State of Gujarat to support the impugned Notification on the face of it is unacceptable. Merely because in the definition clause of `medical practitioner' contained in Section 2(d) of the Gujarat Medical Council Act, 1967, "Nature Cure and Hygiene" system of medicine is not expressly excluded along with "veterinary medicine or surgery or Ayurvedic or Unani or Homeopathic system of medicine", the Diploma holders in Nature Cure and Hygiene cannot be treated as `medical practitioners' and registered as such to enable them to practice Allopathic system of medicine.

Such an interpretation and the course adopted by impugned Notification is definitely against the interest of society in general. Such Diploma holders who have no knowledge and training of Allopathic system of medicine cannot be allowed to practise in that system and be an hazard to the society. The amendment introduced to the Gujarat Medical Council Act is also clearly contrary to the provisions of the Indian Medical Council Act. The petitioner therefore has taken a just and reasonable cause. We seek some support from the decision of the Hon'ble Supreme Court in the case of Poonam Verma v/s. Ashwin Patel & Ors. reported in JT 1996(5) SC 1.

#. Consequently, we allow this petition and quash the impugned Notification dated 25th April, 1979, Annexure-A to the petition with directions to the State of Gujarat to publicize the result of this petition and discontinue registration of Diploma holders in Nature Cure and Hygiene as "medical practitioners" for the purpose of practising Allopathic system of medicine. As we have been informed that this Diploma course has now been discontinued, we hope that there will be no such mistake in future at the instance of the State Government. Rule made absolute in aforesaid terms. In the circumstances, no order as to costs. In view of the decision rendered in the main matter, no order on Civil Application and the same is dismissed.

(D.M.Dharmadhikari, C.J.)

(K.R.Vyas, J.)

(sunil)